MODULE 4: ENFORCEMENT AND COMPLIANCE ASSURANCE

This module evaluates the innovation's reporting requirements, accountability, enforceability, and effectiveness compared to the traditional reporting requirements. Completion of this module may require input from EPA, State, and local enforcement and compliance assurance personnel at the design, implementation, and evaluation phases of the innovation.

Design Phase
To ensure that all substantive and procedural requirements of the innovation are met, the appropriate scope, timing, and availability of all monitoring, reporting, and record-keeping (MRR) requirements should be included in the innovation at the design phase.

Implementation Phase
During the implementation phase, regulatory authorities should review and track information submitted by the facility to monitor compliance and identify problems or trends that may require mid-course adjustments.

End of the Innovation Phase
To verify the results of the innovation, compliance assurance and enforcement staff may need to complete final record reviews and conduct a facility inspection or use alternative methods to verify results. Federal, State, and local regulatory authorities should decide in advance how to allocate these responsibilities to conserve scarce resources.

Formal Evaluation
To evaluate the enforcement and compliance assurance it is essential that the practitioner keep contextual factors in mind when asking how and why certain results were achieved. For example, the innovation results clearly show a rapid rise in the rate of compliance from a target sector. The evaluation needs to ask why compliance changed—was it a direct result of new compliance assistance, was it the result of the innovation that focused on targeted enforcement, or was it the result of economic factors or forces outside of the scope of the innovation? Enforcement and compliance can have important short-term outcomes that should be captured and fully explained in order to make the causal link between the innovation and the outcome.

I. Monitoring, Record-Keeping, and Reporting to State Agencies, EPA, and Stakeholders

The innovator may choose to standardize the collection and tracking of monitoring, record-keeping, and reporting information at the outset of an innovation to assess compliance with MRR requirements at the design of the innovation, throughout implementation and during evaluation of the innovation. Exhibit 4 below is intended to assist EPA, State, and local regulatory authorities to develop a conceptual framework for verifying compliance with MRR requirements and to note any deviations. The table can be modified to meet the needs of the innovation. For each applicable requirement, the innovator will want to identify the monitoring approach and/or materials use and operating parameter requirements for the environmental media, specify the frequency of data collection, and identify the reporting and record-keeping requirements. Depending on the method of determining compliance (i.e., record review, facility inspection, etc.), enforcement personnel will determine whether the innovation is in compliance with applicable requirements. The innovation practitioner will want to tailor the table to meet the specific needs of each innovation, and may choose to create separate tables for monitoring, reporting, and record-keeping purposes.

Design Questions

1. What is the **legal implementing mechanism** for the innovation?
2. What standard permit conditions or regulatory requirements, if any, will require/have been modified?
3. What are the specific **requirements for environmental monitoring** of this innovation?
4. What are the specific **requirements for keeping records** of this innovation?
5. What are the specific **requirements for reporting to regulatory organizations** regarding this innovation?
6. What are the specific **requirements for reporting to stakeholders** regarding this innovation?
7. Do the reports have a **required audience(s)**? (Y/N) If yes, please identify the audience(s).

Implementation Questions

8. To what extent have the specific **requirements for environmental monitoring** of this innovation been met?
9. To what extent have the specific **requirements for keeping records** been met?
10. To what extent have the specific **requirements for reporting to regulatory organizations** been met?
11. To what extent have the specific **requirements for reporting to stakeholders** been met?
12. Have reports been delivered to the required audiences identified in question 7? (Yes/No) If yes, please list dates and method of communication (e.g., website, email public notice). If no, please provide explanation.

II. Compliance Assurance with a "Innovation Agreement"

For this module, the term "innovation agreement" is being used to cover innovation that may also fall under grant programs. The innovator will want to structure the innovation agreement carefully to ensure that all applicable requirements are met and function within the current regulatory framework, unless rule revisions are contemplated by the innovation. The innovator should address all substantive requirements (e.g., technology, emissions or effluent performance, work practice requirements etc.) and procedural requirements (e.g., public notification, review, comment processes; potential termination of the innovation; and reporting and informational availability requirements).

13. How do you ensure that the parties to the innovation comply with the provision(s) of the innovation?
    a. How will the organization's performance under the innovation be compared to the performance that could have been obtained under the normally applicable regulatory structure?
    b. Who is responsible for verifying compliance and environmental performance results and how will it be done?

III. Practical Enforceability of Innovation

Innovation practitioners will want to ensure the practical enforceability of the innovation. This is accomplished by developing monitoring, record-keeping, and reporting requirements that enable regulatory authorities to detect source compliance with all applicable requirements. Compliance personnel will find innovations to be practically enforceable if sufficient data regarding the innovation is available and well organized to perform compliance verification calculations according to established procedures. Further evidence of the practical enforceability of an innovation occurs in the context of inspections. For example, if inspectors find that inspecting innovations is straightforward and comparable to conducting inspections for sources with conventional approaches, the innovation will prove to be practically enforceable.

14. What is the **pre-innovation "baseline"** for enforcement and compliance assurance against which progress will be (is) measured?
15. Can an inspector visiting the innovation site **determine historic and current compliance** from the records maintained on site?
16. Does the innovative permit, if applicable, **contain a legal obligation** for the source to adhere to the terms and conditions of the limitation?

17. Does the permit **rely on the efficiency of a control technology** for compliance with a permit limit? If so, how is that efficiency determined and shown to be accurate?
18. Does the innovation agreement **require the correct type and amount of information** (in logs, notices, monitoring data, etc.) to determine the number and duration of any deviations?
19. How will regulators determine—prior to and throughout the innovation—that the facility is **continuing to implement the innovation**?
20. Do the terms of the innovation agreement obligate a regulator to exercise its **enforcement discretion** in specific ways (if so, explain)?
21. Does the regulator preserve the requisite statutory **inspection and enforcement authority** to satisfy EPA-State delegations of authority?
22. How, and for what reasons, will the **organization return to standard permit terms** should it become necessary to terminate the organization's participation in the innovation?

IV. Redirecting Regulatory Oversight

Potential objectives of an innovation may include redirecting regulatory oversight from lower to higher priority areas and increasing the proportion of time spent addressing "high risk" activities relative to time spent addressing "low risk" activities. The next series of questions are designed to help the innovator design and collect data to determine if redirecting regulatory oversight is achieving the desired outcome for the innovation.

23. What **screening criteria** (e.g., compliance history or participation in leadership programs) are used to ensure that good partners (e.g., facilities or other organizations) participate in the innovation?
24. If applicable, what **combination of conditions and organizational characteristics** are being used to establish the confidence or the analytical basis for redirecting resources (e.g., compliance history, transparency of decision-making, quality and degree of public involvement, third-party auditing, reporting, etc.)?
25. What is the analytical basis being used for determining the **relative priority or risk** of agency activities (i.e., for the purpose of targeting staff time and resources)?

V. Results and Relative Advantage

The innovator should determine what results and relative advantage mean in the context of enforcement and compliance assurance for his/her innovation. For example, is the innovation attempting to redirect regulatory oversight? Is the innovation attempting to achieve greater performance with the same level of resources and no change in oversight? Is the innovation attempting to improve enforcement and compliance assurance activities? The answers will impact the way in which the innovator plans for performance measurement and collects data for the innovation. The innovation may not have to result in a relative advantage in the area of enforcement and compliance, however the innovation should show that there was no change in the current level of enforcement and compliance requirements.

26. To what extent is inspection of a source with the innovation comparable to inspection of a similar source operating under conventional approaches?
27. To what extent **can the source** with the innovation **be more/less easily inspected** to determine compliance than a similar source operating under conventional approaches?
28. Does the innovation **improve on enforcement or enforcement practices** over the current system?

Exhibit 4—Model Table for Monitoring, Reporting, and Record-Keeping (MRR)						
Environmental Media and Pollutants of Concern	**Monitoring Approach (continuous, parametric, analytical testing, composite sample, grab sample)**	**Materials Use and Operating Parameter Requirements (e.g., application rate, percentage by weight)**	**Data Collection Frequency**	**Reporting Requirements for Regulatory Authorities and Stakeholders**	**Record-Keeping Require-ments**	**Compliance Notes (specify date of report and note any deviations)**
Air Emissions by Pollutant (tons/year)						
Average Effluent Concentrations by Constituent (mg/L)						
Hazardous Waste Generated (pounds)						